SUBMISSION

of the

Ontario Federation of Labour

Committee on the Labour Relations Act

and Procedures of the OLRB

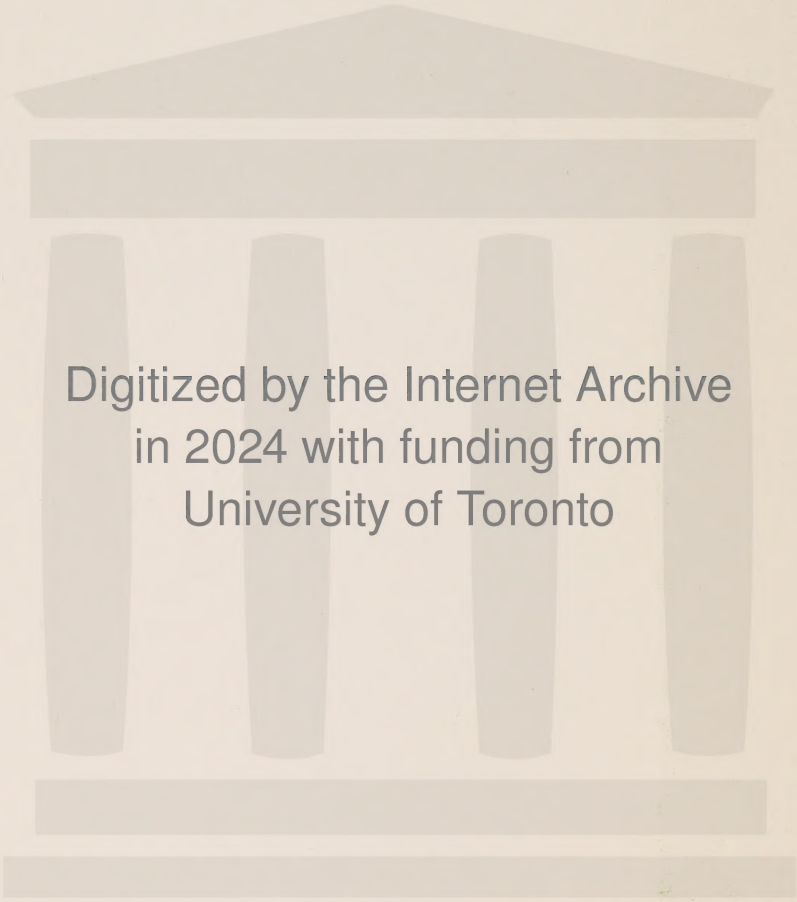
to

HONOURABLE FERN GUINDON

Minister of Labour

Province of Ontario

Feb. 1974



SUBMISSION

OF THE

OFL COMMITTEE ON THE LABOUR RELATIONS ACT

AND PROCEDURES OF THE OLRB

TO

THE HONOURABLE FERN GUINDON, MINISTER OF LABOUR

PROVINCE OF ONTARIO

Honourable Sir:

The Committee appearing before you is composed largely of senior personnel from a number of unions affiliated to the Ontario Federation of Labour who most frequently appear before the Board in certification procedures and other matters.

The observations and proposals contained in this brief are derived from first hand knowledge and experience. They are designed to improve the Act and make it possible to fulfill its intent as spelled out in the preamble. We are anxious that the Board become an institution in keeping with the times, that it become more realistic in its procedures, and that it function properly to ensure that the workers of this province have a better chance to achieve justice.

The position of organized labour in Ontario on the broad aspects of industrial relations is well known to your government. It was thoroughly documented in the OFL submission to the Rand Commission and the special brief on the Commission's Report to Mr. Dalton Bales, one of your predecessors. The annual submissions of the Federation have also highlighted certain proposals dealing with industrial relations. In its last submission to the Cabinet, the Federation gave more space than usual to these matters.

This brief, the culmination of an intensive study by the Committee is in line, in its proposals, with the policy statement on labour relations passed at the OFL convention in November (Appendix I).

It is now almost three years since major amendments to the Act were made. All those concerned have had time to assess their usefulness.

If the aim of the Ministry of Labour in its amendments in 1970 and 1971 was to streamline the certification procedure, improve the collective bargaining process and lessen strife, then it has failed.

The legislation we have today has done nothing to help the two-thirds of the labour force in this province that is unorganized, does not have the benefit of collective bargaining, and is unable to achieve justice in the work place. In fact it places roadblocks to organizing and slows down collective bargaining for many of those who are already organized.

In discussions of minimum standards government spokesmen often express concern for the lot of the small manufacturer, entrepreneur or employer. Yet the labour relations legislation exhibits no such concern for the workers in the thousands of small plants where organizing is difficult and achieving satisfactory contracts is almost impossible.

According to the annual report of the Ontario Ministry of Labour, in the fiscal year 1969-1970, before the amendments to the Act were made, there were 19 cases of applications for certification in the non-construction industry that took more than 169 days to process. For the fiscal year 1972-73, the number of cases that took more than 169 days to process was 32 — almost twice the number as before the amendments were introduced, even though the total number of applications decreased from 483 to 462 (Appendix II). In the construction industry the situation was almost as bad.

Based on information received from departments of your Ministry and our own calculations, in the one year period from October 1971 to September 1972, we estimate that 44.1 per cent of certified non-construction industrial enterprises did not achieve a first agreement (Appendix III). In other words, the new legislation not only made it difficult to achieve certification or a first contract, but the statistics as shown in the tables in the appendixes demonstrate that the new legislation in fact hindered certification and prevented the achievement of a first agreement in too many cases.

The situation is even worse when one notes that approximately a third of the original applications for certification are dismissed or forced to be withdrawn (Appendix IV).

Therefore of all the applications for certification made in the one year period of '71-'72, only 37.5 per cent resulted in a collective agreement, according to our calculations.

It is our considered opinion that this high degree of failure in achieving certification and a first contract is due in no small part to a bad Act badly administered. The Act is weighted in favour of the em-

ployers, the Board, too often, submits to employers' pressures, and nothing is done to decrease the interminable delays.

There is an imbalance in the relationships of the unorganized and even the organized worker and the employer in the small enterprise. This imbalance of power the Ministry should try to correct.

The *raison d'etre* of the Ministry of Labour is not only to see that excessive exploitation of the worker is prevented but to see that the whole of labour is served.

As it is, the Ministry is not even living up to the intent of the Act as spelled out in the preamble —

> It is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.

The Act has been found to be deficient. Not only does it discourage the practice of free collective bargaining, but it prevents workers from reaching the point where they could even start to exercise that right. The final test of the workings of the Act is in its administration and procedures before the Ontario Labour Relations Board. We have always been critical of the administration of the Act and especially the procedures of the Board. In recent years the administration and application of the Act has become intolerable as far as the labour movement is concerned.

Section 79 of the Labour Relations Act is inadequate in protecting the employee from dismissal or discrimination by the employer for engaging in union activity. It is almost impossible under the Ontario Act where the onus of proof is strictly on the union, to prove the employee was fired for union activity. The company pleads innocence of its involvement, suggests it was merely a routine firing and unless the union can point to a blatant overt action, the case is lost for want of proof.

We are suggesting to you that if the preamble to the Act is to have any meaning that Ontario should follow the lead of six other provinces and shift the onus of proof to the company to tell the Board why the employee was fired (Appendix V). If the employee was fired for good and sufficient cause it should not be difficult or embarrassing for the company to prove to the Board's satisfaction that this is the case.

Despite the fact that the unions vet every case to make sure they have a bona fide argument before they go to the Board, the results showed that out of 208 cases processed in 1972 only 16 were granted to the unions by the Board (Appendix VI). Seventy-seven were dismissed and 115 were

withdrawn. We suggest that, under "Scottish law", the great majority of the 192 cases could have been labelled "not proven".

The Board has made it perfectly clear that it hears the cases with the onus of proof being on the union making the charge. In most cases this is an utter impossibility. The records and all other information including work schedules are in the possession of management.

In grievance arbitration cases of discharge, Board chairmen will correctly place the onus of proof on management, yet these same chairmen will reverse this principle in discharge cases before them under the Act.

The intent of the Act is thwarted and the legislation completely negated if employees can be fired or discriminated against with impunity because of their attempts to assist in union organizing.

The Ontario Act is silent on the question of onus and the Board rules that under common law, the onus is on the complainant. This in labour relations places an impossible task on the union representing the complainant and renders the legislation almost meaningless unless we can find an employer who is naive or stupid enough to openly state that his reason for firing the employee was his or her participation in union activities.

We are particularly unhappy with the way the Board has been operating in the past few years. It has become too easy for company lawyers to sidetrack the Board into delays. It has been said that some Board chairmen need a little blood injected into their veins. This statement becomes more credible when we witness the slightest wish of the company representatives receiving such deference from most Board chairmen. Justice delayed is justice denied (Appendix VII).

Company lawyers have been using every known trick and a few new ones to stall certification proceedings. The Board itself adds to the delays by almost invariably appointing an examiner to determine the scope of the bargaining unit. Much time could be saved and some of the hearings themselves avoided if the field officer's report, should one be required, were before the Board at its first hearing after the application is made, as is the practice in some jurisdictions.

Board chairmen have been too preoccupied with the legalistic aspects of matters before them as if they were dealing with civil or criminal cases in the courts. They tend to forget that unlike ordinary jurisprudence, industrial relations and OLRB activities are an on-going process in human relations. The decisions of the Board in its adjudications are more lasting and involve two sides that have to live with each other for a long time. It seems to us that Board chairmen should be able to find room within the legislation for common sense and good judgment.

Some of the Board chairmen have been too involved in arbitration cases and other work with the result that they have not devoted their full attention to the work of the Board. We need more full time chairmen. There is absolutely no reason why some of the chairmen could not be appointed who have had a labour background. Nor, in our opinion, do they always have to be lawyers.

Lately it seems the Board has lost touch with reality. The Man of Aran decision is only one of a number of cases which has lowered the prestige of the Board. This decision was not only offensive to the people concerned, but it lowered the status and the credibility of the Board in the eyes of the public. Likewise, the Brooker Trade Bindery decision was an insult to common sense and a reversal of past procedures. In this case, the Board ruled that some strikers were not employees of the company and were not entitled to vote in any representation vote ordered, just because they exercised their right to find interim employment elsewhere. The end result was that not only were their rights taken away, but also their jobs. To add insult to injury, strikebreakers who had no equity in jobs with the company were given the right to vote!

This decision, in our opinion, is a complete distortion of the Act. The Board chairman in this case was not exercising his proper function of adjudicating — he was legislating.

We believe this is happening because there is no inter-departmental polemics or organized informal discussion on precedent setting decisions.

The whole Board should meet fairly often in executive session to discuss new ideas in industrial relations and the pros and cons of precedent setting decisions and their continuing value or pertinence to today's situation. The members of the Board should also find time to discuss these matters in an informal way with other interested parties, particularly officials of the labour movement.

Since the Ontario Act was last amended, six provinces and the federal government have made important progressive changes in their labour relations legislation.

Mr. Minister, we urge you to up-date and revise the labour relations legislation to incorporate the following (the order in which these points are made follow the chronological order of the Act and does not necessarily reflect their order of importance) :

1. Two-thirds of the workers in this province do not have the benefit of union organization. Large numbers of these workers are denied this right by the Labour Relations Act which excludes taxi drivers, milkstore operators and others by defining "employee" too narrowly in the case of owner operators and franchised operators. Persons employed in agricul-

ture are also excluded for some unknown reason. Still others are excluded by the term "horticulture" which embraces large operations turning out poultry, mushrooms, flowers, shrubs, and other nursery stock, and are really factories in every sense of the term. These workers should all have the same rights as those now included under the terms of the Act.

Recently foremen and supervisors have shown a marked interest in organization. The present Act denies them this right. In today's enterprise, these people are employees for all intents and purposes and should have the right to organize for collective bargaining. These employees are given this right in other jurisdictions in Canada and in other countries. The argument that they carry out functions other than those of the rest of the employees in the same establishment, can be met by certifying them into a separate unit as is the case with office employees and production workers.

The section (11) regarding security guards which does not allow them to join a union of their choice and to be affiliated to central labour bodies is discriminatory. It has proved to be detrimental to those workers in organizing and in bargaining.

All who labour, whether in office, factory, mine or field, regardless of skill or position, should have the right to join the union of their choice and this right should not be circumscribed in any way.

2. With two-thirds of the workers unorganized and the work force constantly growing larger, we fail to see any justification for raising the requirement for automatic certification from 55 per cent to 65 per cent. This section has proven a great hardship to workers seeking organization. Because of turnover and delays a union would have to sign up 75 per cent and often more to obtain automatic certification. This change has been of advantage only to the employers. Ontario is the only jurisdiction that has such an unfair provision. Nowhere in our society do we require more than a simple majority for an expression of opinion.

Evidence of a simple majority of 50 per cent plus should be enough for automatic certification.

3. Once the union gives the employer notice of a desire to bargain with the intent of signing a first agreement or a new agreement, the employer is enjoined, except with the consent of the union, from altering rates of wages or any other term or condition of employment or any right, privilege or duty of employer, trade union or employees. Section 70 (2) appears to fall short of this as it is applied in certification procedures. The same conditions including the provision referring to wages being inviolate should also apply to the procedures in certification.

Once notice of application for certification is received by the employer, he shall not, except with the consent of the incumbent union, if

any, alter the wages or any other term or condition of employment or any right, privilege or duty of the employer, the applicant trade union or the employees.

4. The Act attempts to prohibit employers from interfering with the rights of employees to organize and to join a union of their choice. However, in actual practice, employers have repeatedly violated these sections of the Act and the Board has been more than lenient in most instances in allowing such activities as captive audience anti-union meetings, intimidation, coercion and outright bribery.

Where an employer is found guilty of using bribery, coercion, intimidation or dismissal, or where he is found to have changed the wages or other terms or conditions of employment, or any right, privilege or duty of the employer, trade union or the employees, in order to interfere with organization or to prevent certification of a union, the Board should give automatic certification to the workers without a vote.

5. It has been common knowledge for some time to everyone concerned, including Board members, that the round-robin anti-union petition is in most cases company-inspired and organized, yet it is given weight by the Board. Those circulating the petition do not have to face the same restrictions or responsibilities imposed on the union.

Round-robin anti-union petitions should have no place in certification proceedings.

6. We are against the present practice of the Board which permits the employer in certification proceedings to appear and argue against his employees joining an organization of their choice. This is surely a question for the employees alone to decide. The employer should be compelled to provide only information of a factual nature such as the names of employees, job classifications and descriptions and such other evidence as the Board requires. The law already prohibits employer interference and unfair labour practices and tactics during organizing attempts. The same prohibition should apply to employers appearing before the Board to prevent unionization of their employees.

Only the employees and the union should be considered or be present at any certification proceedings by the Board.

7. When a union is certified it represents all the employees in that bargaining unit. The present Act through its "duty of fair representation" section (60) compels a union to represent the employee in grievances in a fair non-discriminatory manner regardless of the employee's membership or support of the union. It would only be fair to require that all employees in the bargaining unit bear the same formal responsibility to the union by paying dues.

Union check-off should be a condition granted with certification.

8. We appreciate the efforts of the conciliation and mediation services of the Ministry of Labour. However, too often meaningful negotiations do not take place until the strike deadline arrives. This adds to the delays and frustrations.

To make for more meaningful and positive negotiations, the union should have the right to strike at expiry date of contract and the conciliation and mediation services should be so designed to achieve these ends.

9. Historically, injunctions were devised to assist in resolving property disputes. Labour-management relations deal with people, not with things or property. Unfortunately laws such as those relating to injunctions, which were designed to apply to property relationships, have been crudely adapted to apply to the relationship between people. The only purpose injunctions serve in labour-management relations is as strike-breaking tools on behalf of the employers who use them.

Picket lines are a symbol of a union's solidarity and a vital method of obtaining public support, maintaining members' support and morale, and in continuing their determination to stick it out until their grievances are adjusted. Numbers, therefore, are important. To limit or reduce the picket line to a token few by court order, and all that action in itself implies (that the court is on the side of management, that picketing is illegal, etc.), is very often to take the heart out of the whole strike. The right to picket effectively should be a fundamental right in a democratic society.

Injunctions in labour disputes should be outlawed. Picketing during a strike should be recognized as a means of persuasion in addition to disseminating information, and should not be restricted.

10. The labour relations legislation binds us to a no strike pledge during the term of a collective agreement. Management is allowed to make changes during the term of the agreement that affect the working conditions and the jobs of the workers. Quite often management knows they are going to make the changes without informing the union at the time of the signing of the contract.

When work is changed or employment disrupted, whether it is due to technological change, environmental considerations or plant shutdown for whatever reason, management must negotiate these matters with the representatives of the workers who should have the right to re-open the contract and strike as a final determination of the issue.

For the first time in Canada a right-to-strike clause (during the life of an agreement) was written into the Ford agreement. This was in the form of a memorandum to the union signed by the company stating

that if the law is changed to permit strikes during the term of the collective agreement, the agreement will automatically be changed to conform to the law.

The right to strike should apply at any time during the term of a collective agreement on matters not covered by the agreement.

11. Once negotiations break down the union has to strike as a last resort. Before they can go on strike the workers are compelled to go through a protracted procedure of bargaining, conciliation, mediation and waiting periods. The workers involved, having served the company for many years, have built up an equity in their jobs. They should have a right to these jobs under all circumstances. When a legal strike takes place, others should not be allowed to replace them.

Strikebreaking should be outlawed during a legal strike. Police should be prohibited from being used in any way to break strikes.

12. There are times when employers force workers to perform work of other employees who are legally on strike. This has been the cause of many grievances and interruptions of work.

Employers should be forbidden to discipline employees for refusing to perform the duties of other employees who are lawfully on strike.

13. In a democratic society free collective bargaining should be a right of all workers. Collective bargaining works only if the two parties to the dispute have the right to strike or lockout as a final determination of the issue. Compulsory arbitration inhibits and defeats the collective bargaining process. The best example of this is the frustrating ineffectiveness of negotiations of the hospital workers who are bound by the Hospital Labour Disputes Arbitration Act.

Compulsory arbitration in any form should have no place in collective bargaining.

14. In cases of discharge or discipline for union activity, the present Act puts the onus on the union to prove the innocence of the worker, rather than on the company to prove that the discharge or discipline was for just cause.

In discharge or discipline cases, the burden of proof should be on management to justify its actions.

15. The successor rights section of the Act as it now stands gives

the Board the right to determine if a certified union continues to hold the bargaining rights for the employees when the enterprise is sold, leased or disposed of in any other manner. In light of the experience with the Man of Aran case, and others, we believe this section needs revising and strengthening.

Legislation should be provided which would specify that under no circumstances should a successor company have the right to evade its responsibilities to the employees covered by a certificate or a collective agreement.

16. The experience gained in the building industry, in the needle trades, the printing industry, the retail trade, and other jurisdictions shows that there are many other useful and advantageous vehicles for collective bargaining that benefit wide sections of workers and provide stability to the industry.

Industry wide bargaining should be encouraged by legislation in those industries where such a move would bring about stability and improve the welfare of the workers.

17. The mass demonstration by the unions against Bill 167 when it was introduced, was provoked by the government's amendments to the section dealing with the construction industry. One of the most objectionable changes was the one specifying that "no employee shall threaten an unlawful strike. . ." We objected to this section at the time and still do. It is dangerous because it is open to interpretations that can only harm the unions.

All reference to "threaten" in sections 63, 65 and 66 should be deleted from the Act.

Mr. Minister, this submission deals in the main with sections of the Act other than those pertaining to the construction industry. Management and the unions in the construction industry are currently discussing, in the Construction Industry Review Panel, that part of the Act that directly concerns them. You will no doubt be getting their views through that vehicle. As it is, many of the proposals raised in this document apply to the construction industry also.

We hope you give the contents of this submission your careful consideration and urge you to act expeditiously on the matters that have been placed before you.

All of which is respectfully submitted,

for the OFL Executive Board

D. B. Archer
President

Terry Meagher
Secretary-Treasurer

Vice-Presidents

George Barlow, Rene Brixhe, Purdy Churchill, Charles Clark, F. S. Cooke, Jack Donnelly, Bruce Martin, Norman Paxton, William Punnett, Ken Rogers, Iona Samis, Harold Thayer, Gordon Wilson.

OFL Committee on the Labour Relations Act and Procedures of the OLRB

Harry Simon, *Chairman,* John Eleen, *Secretary,* Bill Acton, H. Carl Anderson, Clive Ballentine, Hugh Buchanan, Sam Fox, Henry Kobryn, Bert Munro, Vic Pathe, Ross Russell, I. J. Thompson.

APPENDIX I

SUBSTITUTE RESOLUTION S-6

(Covering Resolutions Nos. 83, 114, 115, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 134, 135, 136, 137, 138, 139, 140, 141, 165.)

LABOUR RELATIONS

WHEREAS the present Ontario Labour Relations Act is both restrictive and repressive to organized labour, and

WHEREAS the procedures and practices of the Ontario Labour Relations Board allow for lengthy and unnecessary delays in certification and other proceedings, and

WHEREAS such restrictions and delays frustrate our obligation to organize the unorganized, and indeed defeat the intent and spirit of the preamble of the Act which states "it is in the public interest of the Province of Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees";

THEREFORE BE IT RESOLVED that the Ontario Federation of Labour reaffirm its position on these matters and urge the government to up-date and revise the labour relations legislation to conform with the following:

1) the right to join a union at one's place of work should be a right of all who work for wages or salaries and should not be circumscribed in any way,

2) evidence of a simple majority of 50 per cent plus should be enough for automatic certification,

3) union check-off should be a condition granted with union certification,

4) the right to free assembly, picketing and demonstrating should be enshrined in law,

5) there should be a minimum of interference by third parties in the collective bargaining process,

6) compulsory arbitration in any form should have no place in labour relations,

7) failure to bargain in good faith should be determined by the Ontario Labour Relations Board and the Board should be given authority to enforce bargaining in good faith,

8) the Ministry of Labour should supply a service to unions and management on financial data, on corporate relationships, wage rates and working conditions in industry to assist in negotiations,

9) sub-contracting of work normally performed by the members of the bargaining unit in order to evade the collective agreement, should be forbidden by law,

10) all workers should have a right to and equity in their jobs,

11) strikebreaking should be outlawed,

12) police should be prohibited from being used in any way to break strikes,

13) organized workers should have the right to negotiate all items that affect them, e.g., pensions, medical plans, safety and environment,

14) all workers should have the right to strike. The same right should apply at any time during the term of a collective agreement on items that could not be foreseen at the time of signing of the agreement,

15) injunctions in labour disputes should be outlawed,

16) unions should have the right to run their internal affairs free from outside interference,

17) industry-wide bargaining should be encouraged by legislation in those industries where such a move would improve the welfare of the workers.

Adopted at OFL Convention 1973

APPENDIX II

Time taken from filing to disposition of applications in which certification was granted, fiscal year 1969-70

Time taken in calendar days	All applications			Construction applications			Non-construction applications		
	Number	Per cent	Cumulative per cent	Number	Per cent	Cumulative per cent	Number	Per cent	Cumulative per cent
Under 8	29	4.3	4.3	27	14.3	14.3	2	0.4	0.4
8 — 14	123	18.3	22.6	105	55.5	69.8	18	3.7	4.1
15 — 21	185	27.5	50.1	26	13.8	83.6	159	32.9	37.0
22 — 28	76	11.3	61.4	9	4.8	88.4	67	13.9	50.9
29 — 35	63	9.4	70.8	4	2.1	90.5	59	12.2	63.1
36 — 42	30	4.5	75.3	6	3.2	93.7	24	5.0	68.1
43 — 49	20	3.0	78.3	3	1.6	95.3	17	3.5	71.6
50 — 56	12	1.8	80.1	2	1.1	96.4	10	2.1	73.7
57 — 63	12	1.8	81.9	1	0.5	96.9	11	2.3	76.0
64 — 70	9	1.3	83.2	1	0.5	97.4	8	1.7	77.7
71 — 77	14	2.1	85.3	1	0.5	97.9	13	2.7	80.4
78 — 84	12	1.8	87.1	1	0.5	98.4	11	2.3	82.7
85 — 91	4	0.6	87.7	—	—	—	4	0.8	83.5
92 — 98	14	2.1	89.8	—	—	—	14	2.9	86.4
99 — 105	9	1.3	91.1	—	—	—	9	1.8	88.2
106 — 126	19	2.8	93.9	—	—	—	19	3.9	92.1
127 — 147	11	1.6	95.5	—	—	—	11	2.3	94.4
148 — 168	8	1.2	96.7	—	—	—	8	1.7	96.1
169 and over	22	3.3	100.0	3	1.6	100.0	19	3.9	100.0
Total	**672**	**100.0**	—	**189**	**100.0**	—	**483**	**100.0**	—

Time taken by Ontario Labour Relations Board to process certification applications granted from filing to disposition, fiscal year 1972-73

Time taken in calendar days	Total certification applications disposed of			Construction industry applications			Non-construction industry applications		
	Number	Per cent	Cumulative per cent	Number	Per cent	Cumulative per cent	Number	Per cent	Cumulative per cent
Under 8	—	—	—	—	—	—	—	—	—
8 — 14	181	24.0	24.0	169	58.1	58.1	12	2.6	2.6
15 — 21	142	18.9	42.9	49	16.8	74.9	93	20.1	22.7
22 — 28	94	12.5	55.4	20	6.9	81.8	74	16.0	38.7
29 — 35	54	7.2	62.6	5	1.7	83.5	49	10.6	49.3
36 — 42	45	6.0	68.6	8	2.7	86.2	37	8.0	57.3
43 — 49	31	4.1	72.7	6	2.1	88.3	25	5.4	62.7
50 — 56	27	3.6	76.3	5	1.7	90.0	22	4.8	67.5
57 — 63	17	2.3	78.6	1	.3	90.3	16	3.5	71.0
64 — 70	24	3.2	81.8	4	1.4	91.7	20	4.3	75.3
71 — 77	17	2.3	84.1	2	.7	92.4	15	3.3	78.6
78 — 84	11	1.5	85.6	3	1.0	93.4	8	1.7	80.3
85 — 91	14	1.9	87.5	2	.7	94.1	12	2.6	82.9
92 — 98	7	.9	88.4	2	.7	94.8	5	1.1	84.0
99 — 105	11	1.5	89.9	—	.0	94.8	11	2.4	86.4
106 — 126	18	2.4	92.3	2	.7	95.5	16	3.5	89.9
127 — 147	7	.9	93.2	1	.3	95.8	6	1.3	91.2
148 — 168	10	1.3	94.5	1	.3	96.1	9	2.0	93.2
169 and over	43	5.5	100.0	11	3.9	100.0	32	6.8	100.0
Total	**753**	**100.0**	—	**291**	**100.0**	—	**462**	**100.0**	—

Source: Ontario Ministry of Labour Annual Reports.

APPENDIX III

TOTAL NUMBER OF CERTIFICATIONS AND NUMBER OF CERTIFICATIONS RESULTING IN COLLECTIVE AGREEMENTS

PERIOD	Certification Granted	Contract Signed	No Contract	% No Contract
Jan. 1968 — June 1969*	677	410	267	39.5
Oct. 1968 — Sept. 1969	532	395	137	25.8
Oct. 1969 — Sept. 1970	491	387	104	21.2
Oct. 1970 — Sept. 1971	377	313	64	17.0
Oct. 1971 — Sept. 1972	390	218	172	44.1

* This entry is for construction and non-construction industries. The other four entries exclude construction.

APPENDIX IV

Certification Applications Received and Disposed of by Ontario Labour Relations Board, by Industry, Fiscal Year 1971-72

INDUSTRY	Number of cases received	Number of cases disposed of			
		Total	Granted	Dismissed	Withdrawn
All Industries	949	915	550	254	111
Manufacturing	237	233	152	65	16
Food and beverages	28	30	21	6	3
Rubber	2	1	1	–	–
Leather	4	3	1	2	–
Textiles	14	10	6	3	1
Knitting mills	4	4	2	2	–
Clothing	4	1	–	–	1
Wood	20	18	11	7	–
Furniture and fixtures	7	8	6	2	–
Paper and allied products	12	12	8	4	–
Printing and publishing	15	19	15	2	2
Primary metals	6	5	1	3	1
Fabricated metals	31	31	21	7	3
Machinery	10	11	5	5	1
Transportation equipment	16	16	8	7	1
Electrical products	7	9	7	2	–
Non-metallic mineral products	24	26	17	7	2
Chemicals and chemical products	14	11	9	1	1
Miscellaneous manufacturing	19	18	13	5	–
Non-manufacturing	712	682	398	189	95
Construction	354	338	188	92	58
Forestry	–	1	–	1	–
Mines, quarries and oil wells	6	7	6	–	1
Transportation	36	37	21	11	5
Storage	1	1	1	–	–
Communication	4	4	1	3	–
Electric power, gas and water utilities	13	9	5	3	1
Wholesale trade	32	31	19	8	4
Retail trade	55	53	26	20	7
Insurance and real estate	12	8	2	4	2
Education and related services	34	39	23	13	3
Health and welfare services	68	66	43	19	4
Motion picture and recreational services	7	6	3	3	–
Services to business	5	5	2	3	–
Personal services	44	36	23	5	8
Miscellaneous services	20	17	14	2	1
Local administration	21	24	21	2	1

Source: Ontario Ministry of Labour Annual Report 1971-1972.

APPENDIX V

EXCERPTS FROM PROVINCIAL LEGISLATION PLACING ONUS OF PROOF ON EMPLOYERS IN DISCHARGE AND DISCIPLINE CASES

Quebec: ". . . there shall be a presumption in his favour that he was dismissed, suspended or transferred because he exercised such right (lawful union activities) and the burden of proof that the employee was dismissed, suspended or transferred for another good and sufficient reason shall be upon the employer."

Nova Scotia: "The burden of proving there is no failure (to comply with the Act) shall be upon the employer, or person acting on behalf of the employer."

Prince Edward Island: "Where any such complaint arises . . . the burden of proof that such suspensions, transfer, refusal to transfer, lay-off, discharge, change of status, or refusal to employ or rehire, was for good and sufficient reason . . . shall be on the person charged (by the complainant)."

Manitoba: "Every employer or person acting on behalf of an employer who discharges from employment, or who refuses to continue in employment . . . (shall be guilty) . . . unless he satisfies the magistrate or judge (that he is not guilty of the violation)." The Manitoba clause is long and involved, but the gist is that the employer must prove that he has not violated the Act — the onus of proof is not on the complainant.

Saskatchewan: "There shall be a presumption in favour of the employee that he was discharged or suspended contrary to this Act, and the burden of proof that the employee was discharged or suspended for good and sufficient reason shall be upon the employer."

British Columbia: "On an inquiry by the board into a complaint under clause (d) of subsection (2) of section 3, the burden of proof that he did not contravene clause (d) lies upon the employer."

Source: CCH Labour Law Reports.

APPENDIX VI

COMPLAINTS UNDER SECTION 79 OF THE OLRA DISPOSED OF BY THE BOARD

	No. of cases	Withdrawn	Dismissed	Granted
Jan./72	19	12	3	4
Feb./72	6	3	3	
Mar./72	9	5	4	
Apr./72	20	9	10	1
May/72	30	20	9	1
June/72	17	9	7	1
July/72	10	4	6	
Aug./72	17	10	6	1
Sept./72	24	17	6	1
Oct./72	19	7	10	2
Nov./72	18	12	6	
Dec./72	19	7	7	5
TOTAL	208	115	77	16
1970-71	153	108	38	7
1969-70	176	105	35	36
1968-69	190	131	47	12
1967-68	176	105	47	24

Source: **Ontario Monthly Report.** Ontario Labour Relations Board.

APPENDIX VII

A PARTIAL LIST OF CASES OF DELAYS IN CERTIFICATION BEFORE THE ONTARIO LABOUR RELATIONS BOARD COMMENCING APRIL, 1972

Union	Company	No. of Employees	Time Period between Application and Certification
Teamsters	E & E Seegmiller	23	100 days
Teamsters	Perth Concrete		134 days
Teamsters	Lytle Engineering	2	180+ days*
Teamsters	Alf Cooper & Co.	26	90 days
Teamsters	Cayuga Materials & Construction, C. F. Simcoe, & others		401 days
C.F.A.W.	F. G. Bradley Meat Co.		166 days
C.F.A.W.	W. H. Rorer Co. Ltd.		92 days
U.B.C.J.	Industrial Mines Installations Ltd.	8	98 days
U.S.W.A.	Elgin Motors Co. Ltd.	140	230+ days
U.S.W.A.	International Nickel Co. of Canada	22	201 days
U.S.W.A.	Atlas Alloys	75	173+ days
U.S.W.A.	Raybestos Manhattan	31	227 days
U.S.W.A.	Canadian Pittsburgh Industries	3	166 days
U.S.W.A.	Transport Personnel & Placement Ltd.	12	651+ days
Nurses Assoc.	Greater Niagara General Hospital		236+ days
Labourers' Int'l Union	Simon-Wood Ltd.		120+ days
Int'l Union Operating Engineers	Towland-Hewitson Construction Ltd.		281+ days
R.W.D.S.U.	S. B. Sutton Wholesale Ltd.	18	151+ days
CSAO National	Sudbury General Hospital		496+ days
C.U.P.E.	Welland County Separate School Board	30	273 days
C.U.P.E.	Lampton County Board of Education	235	184 days
I.B.E.W.	Welland Hydro Electric Commission	17	168 days
U.E.	Square "D" Co.	25	185 days
N.P.G.	C.C.H. Canadian Ltd.	24	100 days
A.C.T.E.	Canadian Underwriters' Association	122	196 days (lost vote)
R.W.D.S.U.	Empire Public House	12	180 days (lost vote)

* All numbers in this column followed by a plus (+) sign indicate the number of days of delay up to and including January 15, 1974, and the certification was still pending as of that date.

Source: OFL Questionnaire and OLRB Weekly Reports.

Published by:

Ontario Federation of Labour
15 Gervais Drive
Don Mills, Ontario

Printed by Craftsmen Printers